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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/652,815
Filing Date: August 29, 2003
Appellant(s): BULLEIT ET AL.

D. Scott Moore
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 28, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,970,477	Roden	10-1999
6,775,267	Kung et al.	08-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-14, 16-18, 20-30, 32-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Roden (5,970,477).

Re claims 1, 13, 17 and 29 Roden teaches a method/system of operating a broadband communication network, comprising: establishing a communication flow between a network access terminal and a site using the broadband communication network (*providing an originating station with access to a distributed computing network -see e.g. col. 4, lines 61-64*); and allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal (*A billing system allocates a cost associated with the communication between a first account associated with the monitored network*

site and a second account associated with the originating station -see e.g. col. 6, lines 19-25).

Re claims 2, 14, 18, and 30, Roden teaches a method/system wherein allocating the cost of the communication flow comprises: allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with the entity other than the user of the network access terminal based on a performance level of the communication flow (*see e.g. col. 5, lines 10-13*).

Re claims 4, 20, and 32, Roden teaches a method/system further comprising: receiving a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level; and providing the communication flow at the enhanced performance level (*see e.g. col. 4, lines 64-67; col. 5, lines 1-5*).

Re claims 5, 21, and 33, Roden teaches a method/system wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: (\$5 per

month, plus 5 cents per minute - see e.g. col. 5, lines 11-13) allocating the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal; and allocating the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (*see e.g. col. 9, lines 50-52*).

Re claims 6, 22, and 34, Roden teaches a method/system wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal.

Re claims 7, 23, and 35, Roden teaches a method/system wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: (*see e.g. col. 5, lines 11-13*) allocating the base cost and the incremental cost of the

communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal *see e.g. col. 8, lines 48-49*).

Re claims 8, 24, and 36 Roden teaches a method/system further comprising: using an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (*see e.g. col. 10, lines 61-67; col. 11, lines 1-9*).

Re claims 9, 25, and 37, Roden teaches a method/system wherein the request is a first request, the method further comprising: receiving a second request from the network access terminal and/or the site to provide the communication flow at the base performance level; and wherein allocating the cost of the communication flow comprises: allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (*see e.g. col. 5, lines 42-60*).

Re claims 10, 16, 26, and 38, Roden teaches a method/system wherein the performance level is based on at least one of bandwidth of the communication flow, duration of the communication flow, latency associated with the communication flow, jitter associated with the communication flow, dropped packets associated with the communication flow, quality of service (QoS) associated with the communication flow, rate limit associated with the communication flow, traffic shaping associated with the communication flow, and priority of the communication flow (*The allocation is based on the duration of the communication - see e.g. col. 5, lines 10-13*).

Re claims 11, 27, and 39, Roden teaches a method/system, wherein the entity is associated with the site (*see e.g. col. 4, lines 21-23*).

Re claims 12, 28, and 40, Roden teaches a method/system wherein the entity is associated with a third party that is not associated with the site (*see e.g. col.9, lines 57-61*).

Claims 3, 15, 19, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roden (5,970,477), in view of Kung et al. (6,775,267 B1).

Re claims 3, 15,19, and 31, Roden teaches a method wherein allocating the cost of the communication flow comprises: allocating the cost of the communication flow between the first account and the second account

Roden does not specifically teach allocating the cost based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level

However, Kung et al. teach allocating the cost based on whether the communication flow is at a base performance level (*default quality of service*) or an enhanced performance level that exceeds the base performance level (*required bit rate*) (see e.g. col. 2, lines 50-52).

Therefore, it would have been obvious, at the time of the invention, to a person of ordinary skill in the art to modify Roden, and include the steps of allocating the cost based on base performance level or an enhanced performance level that exceeds the base performance level, as taught by Kung et al., in order to control costs for the communication network.

(10) Response to Argument

Group 1:

The Examiner is fully aware of the requirements set forth in 35 USC § 102 and 103, and believes that they have been properly applied.

Group 2:

Applicant argues that Roden provides no teaching with respect to allocating costs for broadband Internet access between different entities. The Examiner respectfully disagrees as it is clearly described in column 6, lines 19-27 of Roden. Roden teaches a method and system for providing an end-user with Internet-access. The Examiner would like to bring Applicant's attention to the fact that the term broadband is a relative term. It is understood according to its context. For example, data transmission over a fiber optic cable could be referred to as broadband as compared to a telephone modem operating at 56,000 bits per second. The prior arts cited in the rejection anticipate Applicant's invention.

Group 3:

Applicant argues that Kung does not disclose or suggest allocating costs between different entities based on whether the communication service is provided at a base or enhanced performance level. However, in column 2, lines 10-52, Kung et al. teach a method of providing the user with choices of broadband network capabilities including local access (base performance level) and enhanced multi-media services (enhanced performance level). Billing for the communication service is also taught. Therefore, the combination of Roden and Kung et al. teach Applicant's limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Luna Champagne

/Luna Champagne/

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